

Supreme Court of Kentucky

ORDER

IN RE: CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS

IT IS HEREBY ORDERED that in furtherance of the Amendments to Part IX. of the Rules of Administrative Procedure, the following Code of Professional Responsibility for Interpreters is hereby adopted:

APPLICATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS¹

This code shall be binding upon all persons, agencies and organizations that administer, supervise, or deliver interpreting services to the judiciary, and shall serve as a guide.

PREAMBLE

Many persons coming before the courts are partially or completely excluded from full participation in the proceedings because they are deaf or hard of hearing, have limited or no English proficiency, or are unable to speak. It is essential that the communication barrier be removed to the extent possible so these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help assure that such persons will enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the

¹ The Commentary is a modified version of the 1995 Court Interpretation: Model Guides for Policy and Practice in the State Courts, pp. 195-212, State Justice Institute, National Center for State Courts.

administration of justice. Underlying all these principles is the desire to insure, for all, the right to communicate.

CANON 1: INTERPRETERS SHALL BE ACCURATE AND COMPLETE.

Interpreters shall faithfully render a complete and accurate interpretation, translation, or sight translation, always conveying the content and spirit of the speaker without altering, omitting, or adding anything to what has been stated or written, and shall do so without explanation or personal interpretation.

COMMENTARY

The interpreter has a twofold duty: 1) to ensure the proceedings reflect precisely what was said by a deaf, hard of hearing, or non-English speaking person, and 2) to place the deaf, hard of hearing, or non-English speaking person in an equivalent position as those individuals who can hear or understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

Sign language interpreters must employ all the visual cues that the language they are interpreting requires. This includes facial expressions, body language, and hand gestures. Sign language interpreters should ensure court participants do not

confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: INTERPRETERS SHALL ACCURATELY AND COMPLETELY REPRESENT THEIR CERTIFICATIONS, TRAINING, AND PERTINENT EXPERIENCE.

COMMENTARY

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins disrupts court proceedings and wastes scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

CANON 3: INTERPRETERS SHALL MAINTAIN AN IMPARTIAL ATTITUDE WITH ATTORNEYS, WITNESSES, DEFENDANTS AND RELATIVES. INTERPRETERS SHALL BE UNBIASED AND SHALL REFRAIN FROM CONDUCT THAT MAY GIVE ANY APPEARANCE OF BIAS. THEY SHALL DISCLOSE TO THE APPROPRIATE AUTHORITY ANY REAL OR PERCEIVED CONFLICT OF INTEREST.

COMMENTARY

The interpreter serves as an officer of the court, and the interpreter's duty in a court proceeding is to serve the court and the public. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter shall avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters shall maintain a professional

relationship with the client and shall not take an active part in any of the proceedings. The interpreter should discourage a party's personal dependence.

During the course of the proceedings, interpreters shall not have contact with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official duties. It is especially important that interpreters, who are often familiar with attorneys or other individuals in the courtroom, refrain from casual and personal conversations as this familiarity may convey the appearance of a special relationship or partiality to the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions or opinions should be avoided at all times.

If the interpreter becomes aware that a participant in the proceeding views the interpreter as having a bias or being biased, the interpreter shall disclose that knowledge to the appropriate judicial authority and counsel.

Any condition interfering with the objectivity of an interpreter constitutes a conflict of interest. Before providing services, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information. The following circumstances are presumed to create actual or apparent conflicts of interest for interpreters. Interpreters should not serve where:

1. The interpreter is a friend, associate or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has provided services to any party involved in the case either during the course of or prior to any court proceeding in the immediate or any other related matter;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case; or,
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters shall disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney shall not serve in both capacities in the same matter.

CANON 4: INTERPRETERS SHALL CONDUCT THEMSELVES IN A MANNER CONSISTENT WITH THE DIGNITY OF THE COURT, OBSERVING ESTABLISHED PROTOCOL, RULES AND PROCEDURES OF INTERPRETING, AND OF THE COURT. INTERPRETERS SHALL BE AS UNOBTRUSIVE AS POSSIBLE DURING ANY COURT PROCEEDING.

COMMENTARY

Interpreters should know and observe the established protocol, rules and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a pace and volume that enables them to be heard and understood throughout the courtroom. The interpreter's presence should be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. Interpreters who use sign language or other visual modes of communication must, however, be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: INTERPRETERS SHALL PROTECT AND UPHOLD THE CONFIDENTIALITY OF ALL PRIVILEGED AND OTHER CONFIDENTIAL INFORMATION. INTERPRETERS SHALL NOT DERIVE PERSONAL PROFIT OR ADVANTAGE FROM ANY CONFIDENTIAL OR PRIVILEGED INFORMATION ACQUIRED WHILE ACTING IN A PROFESSIONAL CAPACITY.

COMMENTARY

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his/her duties. Interpreters must refrain from repeating or disclosing confidential information obtained by them in the course of their employment.

In the event an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: INTERPRETERS SHALL NOT PUBLICLY DISCUSS, REPORT OR OFFER AN OPINION CONCERNING A MATTER IN WHICH THEY ARE OR HAVE BEEN ENGAGED, EVEN WHEN THAT INFORMATION IS NOT PRIVILEGED BY LAW TO BE CONFIDENTIAL.

CANON 7: INTERPRETERS SHALL LIMIT THEMSELVES TO INTERPRETING OR TRANSLATING. THEY SHALL NOT GIVE LEGAL ADVICE, GIVE COUNSEL, OR EXPRESS PERSONAL OPINIONS TO INDIVIDUALS FOR WHOM THEY ARE INTERPRETING. INTERPRETERS SHALL NOT ENGAGE IN ANY OTHER

ACTIVITIES THAT MAY BE CONSTRUED TO CONSTITUTE A SERVICE OTHER THAN INTERPRETING OR TRANSLATING WHILE SERVING AS AN INTERPRETER/TRANSLATOR.

COMMENTARY

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary to ensure an accurate and faithful interpretation. Interpreters may be required to initiate communications during a proceeding if they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their pace of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter shall not give legal advice. An interpreter shall not explain the purpose of forms, services or otherwise act as counselors, or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate the language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators, or interviewers or probation counselors.

CANON 8: AT ALL TIMES INTERPRETERS SHALL ASSESS THEIR ABILITY TO DELIVER THEIR SERVICES. WHEN INTERPRETERS HAVE ANY RESERVATION ABOUT THEIR ABILITY TO SATISFY AN ASSIGNMENT COMPETENTLY, THEY SHALL IMMEDIATELY CONVEY THAT RESERVATION TO THE APPROPRIATE JUDICIAL AUTHORITY. INTERPRETERS SHOULD ONLY PROVIDE PROFESSIONAL SERVICES IN MATTERS IN WHICH THEY ARE CONFIDENT OF THEIR ABILITY TO PERFORM ACCURATELY. THEY SHOULD NOT HESITATE TO

WITHDRAW FROM A CASE IN WHICH THEY FEEL THEY WILL BE UNABLE TO FUNCTION EFFECTIVELY DUE TO LACK OF PROFICIENCY, PREPARATION, OR DIFFICULTY IN UNDERSTANDING A WITNESS OR DEFENDANT.

COMMENTARY

If the communication mode of the deaf or hard of hearing person, or language of the non-English-speaking person, cannot be readily interpreted, the interpreter shall notify the appropriate judicial authority.

Interpreters shall notify the appropriate judicial authority of any environmental or physical limitation that hinders their ability to deliver interpreting services adequately, e.g. the court room is not quiet enough for the interpreter to concentrate, hear, or be heard; more than one person at a time is speaking; or, principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret. Sign language interpreters must also ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Whenever possible, interpreters are encouraged to make inquiries as to the nature of a case before accepting an assignment. This enables interpreters to match their professional qualifications, skills, and experience to potential assignments, and more accurately assess their ability to satisfy those assignments competently.

Interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter. When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or intensive research, interpreters shall inform the presiding officer.

Interpreters shall refrain from accepting a case if the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters shall notify the presiding officer if they are unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters shall notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: INTERPRETERS SHALL REPORT TO THE PROPER JUDICIAL AUTHORITY ANY EFFORT TO IMPEDE THEIR COMPLIANCE WITH ANY LAW, ANY PROVISION OF THIS CODE, OR ANY OTHER OFFICIAL POLICY GOVERNING COURT INTERPRETING AND LEGAL TRANSLATING.

COMMENTARY

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: INTERPRETERS SHALL CONTINUALLY IMPROVE THEIR SKILLS AND KNOWLEDGE AND ADVANCE THE PROFESSION THROUGH SUCH ACTIVITIES AS PROFESSIONAL TRAINING AND EDUCATION, AND INTERACTION WITH COLLEAGUES AND SPECIALISTS IN RELATED FIELDS.

COMMENTARY

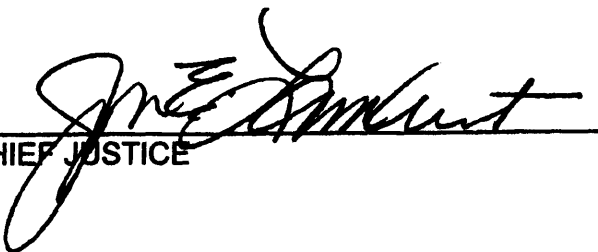
Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues and reading current literature in the field.

This Order shall be effective October 1, 2004, and until further Order.

Entered this the 24th day of September 2004.


CHIEF JUSTICE